

HOUSE BILL NO. 603

INTRODUCED BY J. JAYNE

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE NOTICE REQUIREMENT FOR CONSTRUCTION LIENS TO PROVIDE THAT THE LIEN IS ENFORCEABLE ONLY FOR SERVICES OR MATERIALS PROVIDED AFTER NOTICE IS GIVEN; AND AMENDING SECTION 71-3-531, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 71-3-531, MCA, is amended to read:

"71-3-531. Notice of right to claim lien required -- exceptions. (1) The following are not required to give notice of a right to claim a lien as required by this section:

- (a) a person who furnishes services or materials directly to the owner at the owner's request;
- (b) a wage earner or laborer who performs personal labor services for a person furnishing any service or material pursuant to a real estate improvement contract;
- (c) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to a dwelling for five or more families; and
- (d) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to an improvement that is partly or wholly commercial in character.

(2) A person who may claim a construction lien pursuant to this part shall give notice of the right to claim a lien to the contracting owner in order to claim a lien.

(3) Except as provided in subsection (4), this notice may not be given later than ~~20 days after~~ the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished ~~within the 20-day period before~~ after the date on which notice is given.

(4) When payment for services or materials furnished pursuant to a real estate improvement contract, excluding a contract on an owner-occupied residence, is made by or on behalf of the contracting party from funds provided by a regulated lender and secured by an interest, lien, mortgage, or encumbrance for the purpose of paying the particular real estate improvement being liened, the notice required by this section may

1 not be given later than 45 days after the date on which the services or materials are first furnished to the
2 contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials
3 furnished within the 45-day period before the date on which notice is given.

4 (5) The notice of the right to claim a lien must be sent to the contracting owner by certified mail or
5 delivered personally to the owner. Notice by certified mail is effective on the date on which the notice is mailed.
6 If the notice is delivered, written acknowledgment of receipt must be obtained from the owner. A person may
7 not claim a construction lien unless the person has complied with this subsection.

8 (6) (a) A person who may claim a lien shall also file with the clerk and recorder of the county in which
9 the improved real estate is located a copy of the notice of the right to claim a lien, in the form required by
10 71-3-532. This copy may not be filed later than 5 business days after the date on which the notice of the right
11 to claim a lien is given to the contracting owner.

12 (b) The county clerk and recorder may allow the notice of the right to claim a lien to be electronically
13 filed.

14 (c) The notice filed with the clerk and recorder for the purpose of public notice is effective for 1 year from
15 the date of filing. The notice lapses upon the expiration of the 1-year period unless the person who may claim
16 a lien files with the clerk and recorder a 1-year continuation of the notice prior to the date on which the notice
17 lapses. The clerk and recorder may remove the notice from the public record when it lapses.

18 (d) The continuation statement must include:

19 (i) the clerk and recorder's file number of the notice;

20 (ii) the date on which the notice originally was filed; and

21 (iii) the name of the person to whom the original notice was given.

22 (e) If a notice of a right to claim a lien is required under this section, a person may not claim a
23 construction lien pursuant to this part unless there is an unexpired notice of right to claim a construction lien or
24 an unexpired continuation notice filed with the clerk and recorder at the time that the person files the lien.

25 (7) At the request of any subcontractor or material supplier who may claim a lien through a person
26 providing services or materials to a contracting owner, the person shall furnish to the requestor within 5 business
27 days:

28 (a) a description sufficient to identify the real estate being improved; and

29 (b) the name and address of the contracting owner."
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